

Letter of Findings: 18-20191030
Financial Institutions Tax
For the Year 2015

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Financial Institution failed to provide documentation supporting capital loss deductions.

ISSUE

I. Financial Institutions Tax - Other Deductions

Authority: IC § 6-5.5-1-2; IC § 6-5.5-2-1; IC § 6-5.5-5-1; IC § 6-5.5-5-2; IC § 6-5.5-2-4; IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department of Revenue erred when it disallowed "other deductions" on Taxpayer's 2015 Financial Institutions Tax return.

STATEMENT OF FACTS

Taxpayer is a Financial Institution which submitted its 2015 Financial Institutions Tax ("FIT") return. Taxpayer's return included itself and several affiliates. The Indiana Department of Revenue ("Department") conducted an audit of the return. During the audit, the Department determined that Taxpayer had deducted its total federal capital losses from the previous five years as a modification or "other addition" for the calculation of taxable income before apportionment. However, Taxpayer failed to account for these items on its Indiana FIT-20 return, nor did it provide sufficient supporting documentation. Thus, the modification was disallowed, resulting in an increase in Indiana FIT tax due.

Taxpayer disagreed with the audit's findings and filed a protest to that effect. An administrative hearing was held that this Letter of Findings results. Additional facts will be provided as necessary.

I. Financial Institutions Tax - Other Deductions

DISCUSSION

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Under Indiana law "a unitary group consisting of at least two (2) taxpayers shall file a combined return covering all the operations of the unitary business and including all of the members of the unitary business. However, only one (1) combined return needs to be filed. . . ." IC § 6-5.5-5-1. The combined return "must include the adjusted gross income of all members of the unitary group . . . the department may require a member of a unitary group to provide any information that is needed by the department to determine the unitary group's apportioned income. . . ." IC § 6-5.5-5-2. When filing a combined return for a unitary group, the group's apportioned income consists of:

- (1) the aggregate adjusted gross income, from whatever source derived, of the members of the unitary group; multiplied by

(2) the quotient of:

(A) all the receipts of the taxpayer members of the unitary group that are attributable to transacting business in Indiana; divided by

(B) the receipts of all the members of the unitary group from transacting business in all taxing jurisdictions.

IC § 6-5.5-2-4.

For FIT purposes, "adjusted gross income" means taxable income as defined in Section 63 of the Internal Revenue Code," with certain adjustments. IC § 6-5.5-1-2. One such adjustment is the addition of "[a]n amount equal to the deduction under Section 172 or 1212 of the Internal Revenue Code for net operating losses or net capital losses." IC § 6-5.5-1-2(a)(1)(E). A franchise tax is imposed on taxpayers based on their apportioned income "for the privilege of exercising its franchise or the corporate privilege of transacting the business of a financial institution in Indiana." IC § 6-5.5-2-1(a). Under IC § 6-5.5-2-1(a), the amount of the tax is determined by multiplying the applicable rate by the remainder of:

(1) the taxpayer's apportioned income; minus (2) the taxpayer's deductible Indiana net operating losses as determined under this section; minus (3) the taxpayer's net capital losses minus the taxpayer's net capital gains computed under the Internal Revenue Code for each taxable year or part of a taxable year beginning after December 31, 1989, multiplied by the apportionment percentage applicable to the taxpayer under this chapter for the taxable year of the loss.

A net capital loss for a taxable year is a net capital loss carryover for each of the five (5) years that follow the taxable year in which the loss occurred. *Id.*

Further IC § 6-5.5-2-1(d) sets out the provisions which apply to a combined return computing the tax on the basis of the income of the unitary group when the return is filed for more than one (1) taxpayer member of the unitary group for any taxable year:

(1) Any net capital loss or net operating loss attributable to Indiana in the combined return shall be prorated between each taxpayer member of the unitary group by the quotient of:

(A) the receipts of that taxpayer member attributable to Indiana under section 4 of this chapter; divided by

(B) the receipts of all taxpayer members of the unitary group attributable to Indiana.

(2) The net capital loss or net operating loss for that year, if any, to be carried forward to any subsequent year shall be limited to the capital gains or apportioned income for the subsequent year of that taxpayer, determined by the same receipts formula set out in subdivision (1).

Taxpayer filed a combined return for tax year 2015. Taxpayer's 2015 FIT-20 reported its total federal capital losses for tax years 2010 - 2014 as a modification to the calculation of total income prior to Indiana apportionment. The amount represents total federal capital losses for tax years 2010 to 2014 for one single member. Taxpayer did not report an Indiana FIT-20 modification to add the amount of the deduction allowed for capital loss for federal tax calculation as required by IC § 6-5.5-1-2. Nor did Taxpayer report a capital loss attributable to Indiana prorated among the unitary members. Taxpayer also failed to file a Federal form 1120 Schedule D Capital Gains and Losses. The auditor requested additional documentation during the audit. That documentation was found to be "[insufficient] to determine either the addback of the net capital loss carryovers to the extent used in offsetting capital gains on federal Schedule D or the Indiana net capital loss adjustment."

Along with its protest letter Taxpayer provided a schedule which it believed the auditor wanted and which Taxpayer believed would resolve the issue and reverse the audit adjustment. That schedule and all other documentation has been reviewed by both the auditor and the Legal division and was determined to be insufficient support of the capital loss deduction. In the absence of adequate capital loss records, as required by IC § 6-5.5-2-1(d), all capital loss is considered to have been reported by affiliates which are improperly included in the FIT-20 return. Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied for lack of sufficient documentation.

July 23, 2021

Posted: 09/29/2021 by Legislative Services Agency

